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Legislative Assembly of Ontario

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# **Standing Committee on Regulations and Private Bills**

## **First Report 1994**

**3rd Session, 35th Parliament  
43 Elizabeth II**



Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

The Honourable David Warner, M.P.P.  
Speaker of the Legislative Assembly


Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its First Report for the Third Session of the Thirty-fifth Parliament and commends it to the House.

*Christel Haeck*

Christel Haeck, M.P.P.  
Chair

Queen's Park  
June, 1994



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NUMERICAL INDEX OF REGULATIONS REPORTED



## INTRODUCTION

The Committee presents this Report on Regulations filed in 1989 in accordance with its permanent reference, s. 12 of the Regulations Act, R.S.O. 1980, c. 446 (reproduced as Appendix A), which provides that the Committee shall consider the scope of, and the authority for, all regulations, but not the underlying policies or legislative objectives.

The Terms of Reference of the Committee are contained in Standing Order 104(k) of the Legislative Assembly, which is reproduced as Appendix B.

## STATISTICS FOR 1989

During 1989, 727 regulations were filed, and were published in 3,170 double-columned pages in The Ontario Gazette. The number of pages of text is up about 20 percent from 1988, and nearly 28 percent above the average for the ten years ending in 1989; the number of regulations, down 5½ percent from 1988, is 89 percent of the average for the last ten years. Figures for the years 1980-1989 are as follows:

<u>Year</u>	<u>Regulations</u>	<u>Pages</u>
1980	1,141	2,138
1981	884	1,952
1982	837	2,021
1983	815	2,245
1984	840	3,667
1985	703	1,726
1986	763	2,946
1987	725	2,339
1988	769	2,638
1989	727	3,170

The regulations were made under the authority of 151 Acts under the administration of twenty-four Ministries, the Minister Responsible for Francophone Affairs, and Management Board of Cabinet. Nearly half the regulations are made under fifteen statutes which have more than ten regulations made under each. Over two-thirds of the statutes -- 102 -- have only one, two or three regulations made under each, accounting in all for 150 regulations, or just over one-fifth of the total.

About one-quarter of the 1989 regulations are independent, free-standing texts, complete regulations in themselves; a small minority of these also revoke, or are stated as replacing, other regulations. Apart from the handful of regulations which do nothing but revoke existing regulations, the others amend existing regulations by removing, replacing or adding text.

As was the case in 1988, the Planning Act, 1983 accounted for more regulations than any other Act; the number, sixty-six, is once again down slightly from the previous year's total. This Act and the five Acts with the next largest numbers of regulations account for close to one-third of all regulations filed in 1989: the Highway Traffic Act (44); the Game and Fish Act (38); the Crop Insurance Act (Ontario) and the Environmental Assessment Act (34 each); and the Health Insurance Act (23). A list of Acts with five or more regulations appears as Appendix C, and contains 26 per cent of the statutes under which regulations were filed in 1989.

Nearly one-half of the regulations fall under the jurisdiction of four Ministries: Municipal Affairs (102), Health (91), Agriculture and Food (78), and Natural Resources (77). The Ministry of Consumer and Commercial Relations administers more Acts under which regulations were filed in 1989 -- twenty-one -- than any other Ministry. Appendix D consists of a list of Ministries and other authorities with the number of regulations administered by each.

## **REGULATIONS REPORTED**

### **(a) The Guidelines Violated**

The Committee reviewed the 727 regulations filed in 1989, and wrote to eleven Ministries to make inquiries about some of them. All responded, commenting on all but one of the regulations questioned. The responses, frequently representing considerable effort by the Ministries, are reflected in this report either in the comments made upon regulations noted, or in the absence from these pages of regulations about which the Committee initially had questions. The Committee comments upon thirteen regulations in all; the comments are arranged by Ministry, and within those headings, by the guideline violated.



The three guidelines the Committee found to be violated are:

- **Regulations should be in strict accord with the statute conferring of power ("Statutory Authority"):** the Committee reports five regulations made on topics not authorized in the statute, one of which additionally violates this guideline by virtue of not being made by the authority specified in the statute.
- **Regulations should be expressed in precise and unambiguous language ("Precision of Language"):** four regulations are reported; typographical errors that do not interfere with or obscure the true meaning of a regulation are not reported as violations of this guideline.
- **Regulations should not have retrospective effect unless clearly authorized by statute ("Retrospectivity"):** the Committee reports four regulations which are expressed to come into effect on a date earlier than that on which the regulation was filed.

#### **(b) The Regulations**

In their responses to the Committee's inquiries about the regulations reported in this section, the Ministries in some cases agreed without reservation that the violation in fact took place, or expressed the opinion that the violation was mitigated by certain circumstances. In other cases, the Ministry disagreed in whole or in part or offered no specific comments on the regulation in question. *These latter responses are marked with an asterisk.*

It should be noted that comments on a particular regulation in this report frequently relate only to one aspect of the regulation in question.



## MINISTRY OF AGRICULTURE AND FOOD

### RETROSPECTIVITY

O. Reg. 546/89 under the Farm Products Payments Act

O. Reg. 547/89 under the Grain Corn Marketing Act, 1984

These regulations make complementary changes to fees payable by grain corn producers, one lowering by eight cents per tonne the fee payable to the Fund for Grain Corn Producers, and the other raising correspondingly the fee payable to the Ontario Corn Producers' Association. The regulations are stated as taking effect October 1, 1989, but are noted in The Ontario Gazette as having been filed on October 4. The authorizing statutes do not provide for regulations with retrospective effect.

## MINISTRY OF COMMUNITY AND SOCIAL SERVICES

### STATUTORY AUTHORITY

O. Reg. 162/89 under the Child and Family Services Act, 1984

Regulations for each of the ten Parts of the Act are provided for by ss. 197-206, each section authorizing a list of topics on which regulations may be made by the Lieutenant Governor in Council for the purposes of each successive Part. Regulations prescribing forms and providing for their use are authorized by ss. 197, 199 (by virtue of a 1988 amendment), 202, 203 and 205, for Parts I, III, VI, VII and IX respectively; s. 200 provides for regulations "respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part IV", which could possibly support regulations making forms.

Ontario Regulation 162/89, in s. 5, makes a form for the purposes of Part VIII; s. 204 of the Act, providing for regulations for that Part, does not authorize the making of forms. The Committee, in its Second Report 1989, noted a similar problem in a regulation for Part II of the Act made under s. 198.

The Ministry observes that the form is merely meant to assist physicians to make certain written statements required by the Act, and that there is no penalty for not using the form; and furthermore, that Bill 233 (introduced June 27, 1990; died on the Order Paper) was intended to amend s. 204 of the Act so as to provide for regulations making forms.

## MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

### STATUTORY AUTHORITY

**\*O. Reg. 374/89** under the Travel Industry Act

**\*O. Reg. 399/89** under the Liquor Licence Act

Ontario Regulation 374/89 amends Regulation 938, R.R.O. 1980, under the Travel Industry Act, imposing certain obligations on travel agents and wholesalers concerning information, disclosures and offers of refunds or acceptable alternatives. In the Committee's opinion, the statute does not specifically authorize regulations imposing these obligations; in its Second Report 1989 it made similar observations about O. Reg. 95/88. The Ministry is of the view that the provisions questioned have sufficient authority in the statute, and has cited s. 27(b) and (g) (concerning the terms and conditions of registration, and the form and content of advertising).

Ontario Regulation 399/89 under the Liquor Licence Act amends Regulation 581, R.R.O. 1980, to exempt a certain municipal council from s. 28 of the Act, which limits the frequency with which a question about the sale of liquor in the municipality may be put to the voters. (The exemption provided by the regulation is limited in time, and limited to a particular question.) The authority claimed for this is s. 39(x) of the Act, authorizing regulations exempting "any person, product or premises" from any provision of the Act or its regulations. The Committee does not believe that the words of s. 39(x) support exemptions for municipal councils. The Ministry advises that it "is our opinion that the members of a municipal council were a 'class of persons' as set out in section 39(x). This issue was canvassed at the time the regulation was drafted."

## PRECISION OF LANGUAGE

### O. Reg. 244/89 under the Energy Act

This regulation defines "approved" using five clauses marked (a) to (e). The wording does not make it adequately clear what combination of these clauses constitutes the definition in any given case. The Ministry advises that in any given case, "approved" is defined by clause (a) and one of clauses (b) to (e), as circumstances dictate. It notes that the punctuation should be improved.

## MINISTRY OF FINANCIAL INSTITUTIONS

### STATUTORY AUTHORITY

#### O. Reg. 529/89 under the Motor Vehicle Accident Claims Act

This regulation replaces, with three new forms, a form first made in 1962. The forms concern applications for restoration of drivers' licences and payments to the Motor Vehicle Accident Claims Fund. Section 9(2) of the Act authorizes regulations providing for the matters with which these forms are concerned; but the Committee notes that the Act neglects to give the specific authority for forms that is usually placed in statutes when forms are contemplated.

## MINISTRY OF HEALTH

### STATUTORY AUTHORITY

#### \*O. Reg. 600/89 under the Ambulance Act

This regulation was shown in The Ontario Gazette as having been made by the Lieutenant Governor in Council. The statute's regulation-making authority is found in s. 22, which empowers the Minister (subject to the approval of the Lieutenant Governor in Council) to make regulations. The regulation appears, therefore, to have been made by the wrong authority.



In s. 23, the regulation revokes certain forms. The power to revoke forms should derive from a power to make forms (the Interpretation Act provides in s. 27(g) that "where power is conferred to make . . . regulations . . . it includes power to . . . revoke the same from time to time . . ."). However, the Act is without the specific authority for regulations making the forms which the administration of the Act would seem to require.

## **PRECISION OF LANGUAGE**

### **O. Reg. 332/89 under the Prescription Drug Cost Regulation Act, 1986**

This regulation amends schedules to O. Reg. 690/86. In amending Part B of Schedule 2, which sets out the "best available price" of prescription drugs for the purposes of s. 7 of the Act, item 1079 is revoked without being remade, and an item 1311 is made without a corresponding item 1311 being revoked. The Ministry advises that these were oversights.

## **RETROSPECTIVITY**

### **O. Reg. 234/89 under the Ministry of Health Act**

This regulation concerns grants for the development of health resources in certain underserviced areas. It was filed May 1, 1989, but is deemed, by s. 4, to have come into force on April 1, and therefore is retrospective without (as the Ministry acknowledges) express authority in the statute. It is a case, the Ministry says, of a beneficial program's being implemented on a particular date, with a procedural delay causing the concomitant regulation to be processed late -- unsatisfactory, but to be distinguished from true retroactivity.

## MINISTRY OF LABOUR

### PRECISION OF LANGUAGE

#### O. Reg. 7/89 under the Labour Relations Act

This regulation is made under a provision authorizing regulations "providing for and fixing" remuneration for chairs and members of certain boards. The regulation provides that the "rate of remuneration . . . shall not exceed [certain daily and hourly figures]." O. Reg. 8/89, made at the same time under a similarly-worded authorizing section of the Hospital Labour Disputes Arbitration Act, provides that the "rate of remuneration . . . *shall be* [the same figures used in the regulation under review; emphasis added]." The Ministry advises that the language should be "standardized," as in *both* cases the intention is to fix the actual daily or hourly rate paid, and not to establish a ceiling in one regulation and a rate of pay in the other.

### RETROSPECTIVITY

#### O. Reg. 549/89 under the Occupational Health and Safety Act

This regulation, filed October 5, 1989, is expressed in s. 3 as being in force October 1; there is no authority in the statute for retrospective regulations. The Ministry advises that this was a case of late filing.

## MINISTRY OF NATURAL RESOURCES

### PRECISION OF LANGUAGE

#### O. Reg. 544/89 under the Conservation Authorities Act

This regulation gives a description of an area where the dumping of fill is subject to control by a conservation authority. In schedule 3 to O. Reg. 576/84, made by this regulation there are two references to Lot 10, Concession B. The Ministry advises that the second reference should be to Lot 15.

## **APPENDIX A**

Regulations Act, s.12



## APPENDIX A

### REGULATIONS ACT

R.S.O. 1980, Chap. 446

12.—(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.

## **APPENDIX B**

Terms of Reference: Standing Order 104(k)

## APPENDIX B

# Standing Orders of the Legislative Assembly of Ontario

### XX. COMMITTEES

104. Within the first 10 Sessional days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

(k) Standing Committee on Regulations and Private Bills to be the . . . Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
- (ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
- (iii) Regulations should be expressed in precise and unambiguous language;
- (iv) Regulations should not have retrospective effect unless clearly authorized by statute;
- (v) Regulations should not exclude the jurisdiction of the courts;
- (vi) Regulations should not impose a fine, imprisonment or other penalty;
- (vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
- (viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
- (ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the *Regulations Act*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.



## **APPENDIX C**

List of Acts under whose authority  
five or more regulations were filed in 1989

## APPENDIX C

List of Acts under whose authority five or more regulations were filed in 1989:

Administration of Justice Act	8
Assessment Act	7
Charitable Institutions Act	5
Conservation Authorities Act	7
Courts of Justice Act, 1984	8
Crop Insurance Act (Ontario)	34
Education Act	17
Energy Act	6
Environmental Assessment Act	34
Environmental Protection Act	14
Family Benefits Act	10
Farm Products Marketing Act	10
Farm Products Payments Act	6
Forest Fires Prevention Act	11
Freedom of Information and Protection of Privacy Act, 1987	5
Game and Fish Act	38
General Welfare Assistance Act	14
Health Disciplines Act	9
Health Insurance Act	23
Health Protection and Promotion Act, 1983	7
Highway Traffic Act	44
Homes for the Aged and Rest Homes Act	6
Land Registration Reform Act, 1984	7
Liquor Licence Act	11
Local Roads Boards Act	6
Milk Act	14
Ministry of Health Act	10
Municipal Boundary Negotiations Act, 1981	14

Nursing Homes Act	6
Ontario Drug Benefit Act, 1986	13
Parkway Belt Planning and Development Act	15
Pension Benefits Act, 1987	5
Petroleum Resources Act	9
Planning Act, 1983	66
Prescription Drug Cost Regulation Act, 1986	8
Provincial Offences Act	8
Provincial Parks Act	8
Registry Act	6
Truck Transportation Act, 1988	8





## **APPENDIX D**

List of Ministries with the number of  
regulations filed in 1989 for which each is responsible

## APPENDIX D

List of Ministries and other authorities, and the number of regulations filed in 1989 for which each is responsible:

Management Board of Cabinet	7
Ministry of Agriculture and Food	78
Ministry of the Attorney General	38
Ministry of Colleges and Universities	2
Ministry of Community and Social Services	40
Ministry of Consumer and Commercial Relations	57
Ministry of Correctional Services	1
Ministry of Culture and Communications	1
Ministry of Education	22
Ministry of Energy	5
Ministry of the Environment	58
Ministry of Financial Institutions	13
Minister Responsible for Francophone Affairs	3
Ministry of Government Services	2
Ministry of Health	91
Ministry of Housing	8
Ministry of Industry, Trade and Technology	4
Ministry of Labour	8
Ministry of Municipal Affairs	102
Ministry of Natural Resources	77
Ministry of Northern Development and Mines	2
Ministry of Revenue	34
Ministry of Skills Development	1
Ministry of the Solicitor General	1
Ministry of Tourism and Recreation	5
Ministry of Transportation	67

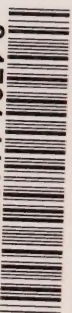
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